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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 715

RATE REGULATION REFORMS

Digest:[1] In response to a court remand, the Board reviewed the erroneous double-counting included in its decision to raise the cap on relief for Three-Benchmark rate reasonableness cases and determined that the $4 million cap still appeared appropriate. The Board provided parties an opportunity to comment on the Board's determination, and now adopts that determination unchanged.

Decided: March 13, 2015

The Board began a rulemaking in 2012 to revise its procedures for rate reasonableness cases in several respects, two of which are pertinent here. First, the Board proposed to remove the existing $5 million limit on relief for "Simplified-SAC" cases,[2] while, at the same time, improving the accuracy of Simplified-SAC by requiring a full analysis of one of the inputs, known as "Road Property Investment" (RPI). Second, because the Board uses the cost of litigating a Simplified-SAC case as the limit for relief under its most simplified procedure—the "Three-Benchmark" methodology[3]—the Board proposed to raise the limit on relief in Three-Benchmark cases from $1 million to $2 million.

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] In a "stand-alone cost" (SAC or Full-SAC) case, the Board considers both whether the captive shipper is being forced to cross-subsidize other parts of the railroad's rail network and whether the existing operations could be conducted more efficiently. It ultimately determines rate reasonableness by looking at the costs that would be incurred by a hypothetical, optimally efficient rail carrier providing the service at issue with the actual revenues the defendant carrier receives for providing that service. Simplified-SAC also looks at whether there is a cross-subsidy by comparing costs and revenues, but it eliminates the inquiry into the defendant's efficiency by assuming that all existing infrastructure along the predominant route used to haul the complainant's traffic is needed to serve the traffic on that route.

[3] In a Three-Benchmark case, the Board determines rate reasonableness by examining the challenged rate in relation to three "benchmark" figures, each expressed as a ratio of revenues to variable costs of providing rail service.

Based on the evidence submitted during the comment phase, the Board determined that a $2 million relief cap was too low, as the Board's basis for the relief cap—its estimate of the cost of litigating a Simplified-SAC case—was itself too low. After considering comments from the parties, the Board determined that the cost to litigate a Simplified-SAC case with a full RPI analysis would be $4 million. Accordingly, the Board set the limit on relief in Three-Benchmark cases at $4 million. Rate Regulation Reforms, EP 715 (STB served July 18, 2013).

On appeal to the United States Court of Appeals for the District of Columbia Circuit, CSX Transportation, Inc., and Norfolk Southern Railway Company (collectively, the Eastern Railroads) challenged, among other things, the $4 million relief cap. The Eastern Railroads argued that, in estimating the cost of litigating a Simplified-SAC case under the new procedures (i.e., with a full RPI analysis), the Board had double counted some costs of performing an RPI analysis by including the costs of performing both a simplified and full analysis. In its decision, the court found that the Board had not adequately addressed the double-count argument, but rather than vacate, the court said it would remand the matter back to the agency because "the Board may be able readily to cure a defect in its explanation." CSX Transp., Inc. v. STB, 754 F.3d 1056, 1066 (D.C. Cir. 2014) (internal quotations omitted).

On remand, the Board issued a decision addressing the double-count issue. Rate Regulation Reforms (Remand Decision), EP 715 (STB served Dec. 3, 2014). In that decision, the Board acknowledged the double count and determined that it amounted to about $265,000, resulting in an estimate of $3.73 million to litigate a Simplified-SAC case. However, the Board also explained that even correcting for this double count, a relief cap of $4 million for Three-Benchmark cases was still appropriate because: (1) the Board has previously rounded other litigation cost estimates to the nearest million dollars when setting relief limits and has rounded by greater percentages than here; and (2) such rounding was consistent with the Board's goal of "improving our rate review process to ensure that it is as fair and accessible as possible" to all shippers, including those with relatively small cases. Id. at 4 (quoting Rate Regulation Reforms, slip op. at 2). The Board announced a 20-day comment period on its intended resolution of the double-count issue, and indicated that if no comments were filed, it would adopt the approach without change.

DISCUSSION AND CONCLUSIONS

One comment was filed in response to the Remand Decision. That comment, by the American Chemistry Council, supported the Board's approach to resolving the double-count issue. Accordingly, we will adopt that approach and maintain a relief cap of $4 million for Three-Benchmark cases.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The relief cap for Three-Benchmark cases remains at $4 million.

2. This proceeding is discontinued.

3. This decision is effective on the date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.